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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAYVON DARNELL TATE,

Defendant and Appellant.

E046021

(Super.Ct.No. FSB705046)

OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge.

Affirmed as modified.

Chris Truax, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Scott C. Taylor and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Dayvon Darnell Tate was convicted by a jury of evading an officer with willful disregard for the safety of persons or property (count 1; Veh. Code, § 2800.2, subd.

(a)), unlawfully transporting an assault weapon (count 2; Pen. Code, § 12280, subd. (a)(1)), unlawfully transporting cocaine base (count 3; Health & Saf. Code, § 11352, subd. (a)), and unlawfully transporting methamphetamine (count 4; Health & Saf. Code, § 11379, subd. (a)). The jury also found that counts 1 through 4 were committed in association with a criminal street gang with the intent to promote or further gang activity (Pen. Code, § 186.22, subd. (b)(1)(A)) and that, as to counts 3 and 4, defendant was personally armed with a firearm (Pen. Code, § 12022, subd. (c)). Defendant contends the evidence was insufficient to support the jury's finding that his crimes were committed in association with a gang with the intent to promote or further gang activity. We affirm and modify the judgment to impose the correct amount of court security fees.

BACKGROUND

On December 11, 2007, while driving a vehicle that had been reported stolen, defendant drove away from an attempted stop by two police officers. After a high-speed chase resulted in collisions, defendant fled from his vehicle. Two passengers remained in the vehicle. A rifle was located in the vehicle next to one of the passengers (codefendant), propped up against the left side of the passenger seat by the center console. The rifle was loaded with a full magazine and had tinfoil covering the pistol grip. Found in the trunk was a hooded sweatshirt that zipped up so the entire face would be covered except for mesh openings for eyeholes. After fleeing through a field and a couple of residential yards, defendant hid in a thick bush in which he was soon apprehended. A clear plastic baggy containing cocaine base and four smaller baggies of methamphetamine were located in a green waste bin two to three feet from where defendant was located.

Defendant was an admitted gang member. A police officer testified that the codefendant passenger, who had been riding in the front passenger seat, had previously admitted to being a member of defendant's gang and had also been observed wearing that gang's apparel. The codefendant testified that he was not a gang member, had not admitted being a gang member to the police, had refused to sign a police gang card, had not been wearing gang apparel, and had a moniker from being a clown dancer not from being a gang member. The other passenger did not testify.

A gang expert from the police department testified as to the background of defendant's gang as well as the expert's experiences with defendant's gang. The expert had previously testified regarding defendant's gang, had interviewed approximately 24 of the 40 members of defendant's gang, had executed search warrants on members of defendant's gang, and had read reports as well as spoke to other officers concerning defendant's gang. The expert confirmed that the gang's primary activities were narcotic sales and criminal activity. The expert had "assisted with the investigation" that resulted in charges against a member of defendant's gang including counts for murder, attempted murder, assault with a firearm, and a gang enhancement allegation. The expert had "assisted in tracking down" a passenger who had fled from a vehicle traffic stop that led to the conviction of a member of defendant's gang for possession of a firearm. The expert was "involved in the foot pursuit" of a member of defendant's gang, which eventually led to that member's conviction for "possession [of marijuana] for sales and battery of an officer." For all three offenses the expert confirmed the date the offense or offenses occurred, the superior court case number, the name of the offender, and that the offender

was in defendant's gang. The expert opined that both defendant and the codefendant passenger were members of defendant's gang. The expert further testified that possession of narcotics, possession of a weapon, and evading police would "benefit not only the gang member himself, but the criminal street gang as a whole."

At sentencing, the trial court imposed "a court security fee of \$20.00." The court security fee was not included in the abstract of judgment.

STANDARD OF REVIEW

"The substantial evidence standard of review applies to section 186.22 gang enhancements. [Citations.]" (*People v. Augborne* (2002) 104 Cal.App.4th 362, 371.) "Substantial evidence is evidence which is 'reasonable in nature, credible, and of solid value.'" [Citation.] 'In reviewing the sufficiency of the evidence, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" [Citation.] We must presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from the evidence. [Citation.] 'The focus of the substantial evidence test is on the *whole* record of evidence presented to the trier of fact, rather than on "isolated bits of evidence.'" [Citation.]' [Citation.]" (*People v. Medina* (2009) 46 Cal.4th 913, 919.)

DISCUSSION

Defendant contends that the gang expert's testimony was not sufficient to establish the predicate acts, and that the conviction of both defendant and the codefendant passenger for transporting an assault weapon was also not sufficient to establish the predicate acts

necessary for imposing the gang enhancement. In particular, defendant's first contention is that the gang expert's testimony as to prior offenses by gang members was "otherwise inadmissible hearsay" that could not "be considered as independent evidence of any fact that must be proven."

The scope of evidence in the record includes the reasonable inferences that can be drawn from the record. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 89.) "A gang engages in a 'pattern of criminal gang activity' when its members participate in 'two or more' statutorily enumerated criminal offenses (the so-called 'predicate offenses') that are committed within a certain time frame and 'on separate occasions, or by two or more persons.' ([§ 186.22], subd. (e).)" (*People v. Zermeno* (1999) 21 Cal.4th 927, 930.) "In order to prove the elements of the criminal street gang enhancement, the prosecution may, as in this case, present expert testimony on criminal street gangs. [Citation.]" (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1047–1048.) The testimony of a police officer has been sufficient to provide substantial evidence of predicate offenses. (*In re Ramon T.* (1997) 57 Cal.App.4th 201, 207 [officer opined that a gang "engaged in several of the crimes listed in section 186.22 as a primary activity," including, specific examples and support based upon personally investigating several cases].) However, "[conclusory] testimony that gang members have previously engaged in the enumerated offenses, based on nonspecific hearsay and arrest information which does not specify exactly who, when, where and under what circumstances gang crimes were committed, does not constitute substantial evidence. [Citation.]" (*In re Jose T.* (1991) 230 Cal.App.3d 1455, 1462.)

The gang expert's testimony as to defendant's gang consisted of expert opinion, foundation for that opinion, and testimony based upon his personal knowledge. Thus, contrary to defendant's contention, the gang expert's testimony was not based upon "nonspecific hearsay and arrest information." For instance, the gang expert had personal knowledge of the predicate offenses because he had assisted in the investigation of two of the offenses and was involved in the foot pursuit in the third. Contrary to defendant's contention that the gang expert's testimony was conclusory, the testimony provided the date, circumstances, and superior court case numbers of the predicate offenses. Thus, the gang expert's testimony provides substantial evidence upon which the jury could rely to find that the predicate offenses did occur. (See *In re Ramon T.*, *supra*, 57 Cal.App.4th at p. 207.)

Because the expert's testimony provides substantial evidence supporting the predicate offense element of the gang enhancement, we do not address defendant's contention that the conviction of the codefendant did not qualify as a predicate offense.

COURT SECURITY FEES

Although not raised by the parties, we note that the trial court only imposed one \$20 court security fee. Penal Code section 1465.8, subdivision (a)(1), provides in relevant part that, "a fee of twenty dollars (\$20) *shall* be imposed on every conviction for a criminal offense" (Italics added.)

This language is mandatory. "[Penal Code s]ection 1465.8's legislative history supports the conclusion the Legislature intended to impose the court security fee to *all* convictions after its operative date." (*People v. Alford* (2007) 42 Cal.4th 749, 754, italics

added.) This includes convictions in which the sentence was stayed pursuant to Penal Code section 654. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371.) Where no fee is imposed at all the judgment should be modified on appeal to include the fee. (*People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1328.)

Accordingly, the judgment should be modified to include the \$20 court security fee for each of the four counts of which defendant was convicted.

DISPOSITION

The judgment is modified to include the imposition of four \$20 court security fees. The superior court clerk is directed to amend the abstract of judgment to include the four \$20 court security fees in box 11, and then forward a corrected copy of the abstract to the Department of Corrections and Rehabilitations. In all other respects, the judgment is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

McKINSTER

J.